CONSIDERATIONS

ON THE

NATURE AND ORIGIN

OF

LITERARY PROPERTY:

Wherein that Species of PROPERTY is clearly proved to ſubſiſt no longer than for the Terms fixed by the Satute 8vo Annæ.

TO WHICH IS ADDED, A

LETTER

TO

ROBERT TAYLOR,

BOOKSELLER, in BERWICK.

Printed for ROBERT TAYLOR, Bookſeller.

MDCCLXVIII.

CONSIDERATIONS

ON THE

NATURE AND ORIGIN

OF

LITERARY PROPERTY.

THAT Learning and learned Men ſhould be encouraged, not checked, and that the Knowledge which Books impart ſhould be diffuſed, not confined, are Propoſitions, which, in this Age, and in this Country, will not be controverted.

The Queſtion therefore concerning Literary Property, which has of late Years been much agitated between the Bookſellers of London, and thoſe of Edinburgh, Glaſgow, and ſome Towns in England, ſeems very well to merit the Public Attention; as the firſt Claſs of Diſputants maintain, that on their Succeſs depends the Good of Authors, the other, that, on theirs, the Good of Readers.

Several acute and ingenious Eſſays have been publiſhed on the Subject; but every one who reads them muſt obſerve, that, however much the London Bookſellers may pretend all Authors are intereſted in the Quarrel, theſe Pamphlets are not the ſpontaneous Productions of Authors, zealous to aſſert their injured Rights, but the laboured Efforts of Gentlemen learned in the Law, employed or importuned to compoſe them; nor will this appear at all ſurpriſing to thoſe who reflect on the trifling Copy-money paid to the Authors of *Paradiſe Loſt*, and the *Juſtice of Peace*; by which two Books Thouſands, and Ten Thou-

ſands have been gained to the *Trade*; and that invariably, though not always perhaps in the ſame Proportion, the Profits of the Author are but a Mite, when compared with thoſe of the Bookſeller. No wonder then that Authors ſhould

" Think what penurious Maſters they have ſerv'd,
" Taſſo run mad, and noble Spenſer ſtarv'd * :"

And for that Reaſon behold the Battles of Bookſellers with a frigid Indifference, ſince, whatever way the Diſputes may terminate, they are, to Authors, *Bella nullos habitura triumphos.*

It is the Intention of this Pamphlet to ſtate ſome Facts and Obſervations, relative to this Controverſy, not hitherto taken Notice of; which, it is hoped, may have ſome Tendency to throw additional Light on the Queſtion, and aſſiſt thoſe who are deſirous to try it by the Dictates of common Senſe, and the Rules of public Utility.

Before the Art of Printing was invented, and while Copies of Books could only be obtained by the tedious Method of Tranſcribing, it is evident that Authors could reap but little pecuniary Advantage from the Sale of their Performances, to compoſe which, the Love of Fame or of Mankind, (noble Inducements!) were, for the moſt Part, their only Motives; and though we are now a-days told, that, were it not for the Interpoſition of Bookſellers, the Public would be deprived of moſt Works of Merit, and of all that are attended with Labour, Difficulty, and Expence; yet every Perſon, not a Stranger to claſſical Learning, can atteſt, that, while Copy-money was almoſt unknown, the moſt admirable Works of Genius, Judgement, and Application, were produced; and thoſe who are converſant in modern Writings muſt be ſenſible, that though Copy-money has multiplied Books, yet has it rendered them generally worſe; has bribed Men to proſtitute their Talents, ſubjected Wit, and Parts of all Kinds, to Drudgery and Dependence, and conſequently degraded, rather than advanced the Character of Author †.

* See Prologue to Lee's Theodoſius.

† Typographia bona ſane ſtudiorum nutrix eſt, ſed audax ſæpe lucricupida, et que non minò vere corruptrix librorum audeat, quam propagatrix. *Lipſ. in Præf. Critic.*

But

But though there is no Doubt, that the earlieſt and beſt Works of Antiquity were written and communicated to the World from no Proſpect of Gain, yet we may gather from ſeveral Paſſages in Latin Authors, that Sales of literary Copies, for the Purpoſes of Recital or Multiplication, were not unknown to the Romans; * and yet it is certain, that their Lawyers, accurate and ſubtle as they were, never entertained any Imagination, that Authors, after Publication, could prohibit others from tranſcribing their Compoſitions:—A Diſcovery reſerved, it ſeems, to illuſtrate the Annals of modern Juriſprudence.

The firſt Inventors of Printing were very deſirous to monopolize it, and therefore did their utmoſt to conceal it †, not being Metaphyſicians enough to imagine that by inventing they had acquired an excluſive Right to exerciſe that Art; but, in Spite of their Endeavours, it ſoon ſpread; Printers multiplied, and interfered with one another, as all Perſons muſt do, more or leſs, who are concerned in the ſame Trade.

To prevent or moderate this Inconvenience, ſome of the early Printers applied to the Pope, the Republic of Venice, and to the Duke of Florence, for the Sanction of their Authority, to ſecure to them the ſole Privilege of printing the Books of which they were the firſt Publiſhers; and this they obtained for a Term of Years, ſeldom exceeding fourteen, and often not ſo long, as appears from the firſt Editions of the Claſſics, to which Patents are commonly prefixed, excepting *Cicero's Offices*, and ſome others, printed before ſuch Privileges were thought of.

Hence it is clear, that the Origin of legal Titles to Books was a Privilege granted, not to Authors, to prompt them to write, but to Printers, to induce them to print Editions of Works that then lay in Manuſcript.

But the Tranſition, from the Encouragement of Printers

* See Blackſtone's Comm. on the Laws of England, Vol. II. p. 406. *in fine.*

† "Inventores primos id clam habuiſſe, "omneſque ſecreti conſcios, Religione etiam Jurisjurandi interpoſita, excluſiſſe, "ideoque vaſtæ molis opera per paucis "operariis fuiſſe concredita, *Maittaire Annal. Typogr.* I. p. 4.;" and in p. 10. he cites a Paſſage from an Author, who explains the Particulars of the Diſcovery. "Cum igitur Gutembergius ad ſumptus "refundendos damnatus fuiſſet, et ex eo "ſimultates inter illum et Fauſtum magis "exarſiſſent, ille autem interea artem vidiſſet et didiciſſet, ſiquidem inter tot operas, quæ ad illam excudendam requiruntur, fieri non potuit ut ea diutius occultaretur, quod etiam Deus procul dubio noluit Moguntia argentinam ſe contulit," etc.

to that of Authors, was obvious; and accordingly, ſoon after, Privileges appear in Favour of the Author, which are by him commonly aſſigned over to the Bookſeller whoſe Name is marked on the Title-Page; and, as the Privilege was always limited to a certain Period, the Author never pretends to convey more.

Many of theſe Privileges are granted under certain Conditions; ſuch as, that Copies ſhall be given to ſo many Libraries; that the Price ſhall not exceed a certain Rate, and that the Work ſhall be executed on the ſame Paper, and with the ſame Types, of which a Specimen had been exhibited before the Privilege was conferred. The two firſt of theſe Conditions were adopted by our Statute *8vo Annæ*, but the Proviſo, for regulating the Prices, was afterwards repealed as impracticable; ſo that in this Country we have no Check upon the Extortions of literary Monopoliſts.

As abſolute Power prevailed in the Countries where thoſe Privileges were firſt deſired, they would, doubtleſs, be granted without any Demur about their Legality, as they gave the Prince a Handle for ſuperintending and controlling the Preſs, which at one Glance muſt have been perceived by him, or his Miniſters, to be of very great Conſequence to Government.

That Power was early claimed as a Part of the Prerogative in this Iſland, where the Lawyers held, that Printing was *inter regalia*; and, in *Scotland*, an Act paſt in Queen Mary's time, diſcharging any Book to be printed without a Licence, under the Pains of Confiſcation of Moveables, and perpetual Baniſhment: And in the Reign of Charles II. a law was enacted much to the ſame Purpoſe in England *; and Privileges to Printers and Authors were readily grant-

* Sir George Mackenzie, who was Lord Advocate for Scotland, in his Obſervations upon the Act juſt now mentioned, (Act 27th Par. 5th Q. Mary,) expreſſes himſelf thus: "Printing is *inter regalia*, and ſo "the King may diſcharge any Man to print "without his Licence. *Vide Fritsch. de* "*Typographiæ Abuſu*, where he makes "the Regulation of the Preſs to depend "upon every Magiſtrate, by the Law of "Nations; and Printing may do as much "Hurt to the Government as Arms; and "ſo the Magiſtrate ſhould have the Com-"mand of the one as well as of the other; "though I know it is moſt unjuſtly pre-"tended by ſome Republicans, that, Print-"ting being a Trade, no Man can be de-"barred from the free Uſe of it, except by "Parliament, in which their own Con-"ſent is implied. We ſee alſo, that the "King allows his own Printer only to "print Bibles and other School-Books, "etc. *Vide Act* 25. *Par.* II. *James* VI. "againſt the Sellers of erroneous Books." The ſame Doctrine was maintained in England.

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ed in both Kingdoms, all on a Narrative of the humble Supplication of the Printer or Author, and of the Favour and Indulgence of the Prince *.

Upon this Footing ſtood theſe Privileges all over Europe, it never having been once dreamed, that they were granted *ex juſticia* in Virtue of a *perfect* Right, but indulged from Favour, and a View to public Expediency, in the ſame Way as they had long before been yielded to the Contrivers of uſeful Machines, and others

"Inventas, aut qui vitam excoluere, per artes."

On the contrary, the ſtrict Legality of them was called in Queſtion, and only ſupported by Arguments drawn from public Utility; and it was admitted they ought to be recalled whenever productive of any Inconvenience; and Inſtances are not wanting of that having been done, as appears from ſeveral Treatiſes of that Period †.

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* See Ames's *Typogr. Antiq.* from p. 484. paſſim.

† See Fritchius *de Abuſibus Typographiæ tollendis, ſect. 2.* par. 4. and alſo his Treatiſe *de originali ac naturali libertate commerciorum neceſſaria et legibus munienda, Cap.* 10. which is entitled, *Quæ et quatenus Monopolia ſunt licita*, towards the End. In the Paſſage firſt quoted his words are: "Privilegiorum quæ Typographis nova ac ſumptuoſa ſcripta imprimentibus, a ſuperiore concedi ſolent varius abuſus, quamvis enim ejuſmodi conceſſio quibuſdam Monopolium ſapera adeoque res illicita videatur, iniquum tamen non eſt, ſi quis ſuper impreſſione libri in quem multos erogavit ſumptos lucrum et commodum aliquod laboris ſui præ aliis ſentiat, ne quod alias fieri poſſet, aliorum facto in paupertatem inopinatam conjiciatur. *Vid. Carpz. Jur. Conſ. l.* 2. *def.* 414. Quod ſi tamen abuſus privilegii conceſſi in perniciam reip. vergat, dubium non eſt illud quocunque etiam modo impetratum ſit juſtiſſime revocari, aut tolli poſſe. Eſt autem præcipuus privilegii abuſus hic, quod Typographi et Bibliopolæ librorum pretia pro lubitu augere ſoleant, quæ hodie, non ſine reip. literariæ decremento in tantum excrevere, ut magiſtratus rei huic obicem ponendi juſtiſſimam cauſam haberent." In the Paſſage cited from his other Treatiſe he is ſtill more explicit: Talking of the juſt Grounds for granting Monopolies, he ſays: "Tertia denique cauſa eſt equitas quæ vocatur ſumma ratio, et eſt attemparatio juris ſcripti."—"Exemplum tradit Marcellus Donatus in *Sueton. in Vita Tiber. c.* 71. Inventoribus alicujus rei novæ, *e. g.* Machinæ vel Operis publice proficui loco premii ſeu fructus, quidam ſingularis induſtriæ, concedi poſſe illius exercitium ad tempus, et uti ſoli divendunt, ejuſmodi quæ eſt quod Typothetis vel Bibliopolis indulgere non raro ſolet, ut intra certum tempus ſoli libros diſtrahunt quos Typis excuderunt, vel excudi impenſis ſuis curarunt, licet non raro hodie ejusmodi privilegiis inexplebilis quorundem avaritia peſſime abuti conſueverit."—"Unde arreſto curiæ parliamenti Lutetiani revocatum eſt aliquando privilegium Typographo Titio datum, ut ſolus poſſet imprimere tabulas alphabeticas."

From theſe Paſſages it is plain, that in 1667, when this Author wrote, there was no notion entertained, that there was at common Law any excluſive Right to print a Book, and that ſuch Right was only created by a Monopoly granted: That it was not thought juſt that this Monopoly ſhould be perpetual, but only *ad certum tempus*, that the Perſon privileged might receive *aliquid lucrum præ aliis*; and, that the Foundation of granting ſuch a Monopoly was public Utility and Equity. This

Equity

In Britain, Literary Property was taken under the Conſideration of the Legiſlature, and an Act paſſed to aſcertain and regulate it, which falls next to be conſidered; and for that Purpoſe it will not be improper, that the Procedure in Parliament, previous to the Enactment, be laid before the Reader, as recorded in the *Journals of the Houſe of Commons*.

12th December 1709, "A Petition of Henry Mortlock, "&c. on behalf of themſelves, and other Bookſellers and "Printers about the City of London, and elſewhere, "was preſented to the Houſe, and read; ſetting forth, "That it has been the *conſtant Uſage* for the Writers of "Books to ſell their Copies to Bookſellers or Printers, to "the End they might hold thoſe Copies *as their Pro-* "*perty*, and enjoy the Profit of making and vending Im- "preſſions of them: Yet divers Perſons have of late in- "vaded the Properties of others, by reprinting ſeveral "Books without their Conſent, and to the great Injury "of the Proprietors, even to their utter Ruin, and the "Diſcouragement of all Writers in any uſeful Part of "Learning; and praying, That Leave may be given to "bring in a Bill, for ſecuring to them the Property of "Books bought and obtained by them.

"Ordered, That Leave be given to bring in a Bill ac- "cording to the Prayer of the ſaid Petition; and that Mr. "Wortley, Mr. Compton, and Mr. Pyton, do prepare "and bring in the bill."

Equity, it will appear from the Sequel, is ſuch as cannot be inforced by Courts of Juſtice; and this Author, in the Cloſe of the Treatiſe laſt mentioned, juſtly teaches, that Monopolies cannot be granted but by the public Law, or Authority of the ſupreme Magiſtrate: "Communior tamen "et procul omni dubio veritati magis con- "ſentanea eſt eorum ſententia qui publica "legis aut magiſtratibus auctoritate con- "cedenda eſſe cenſent, quo etiam reſpec- "tu monopolia non poſſe inſtitui niſi a "non recognoſcentibus ſuperiorem. Li- "bertatem igitur commerciorum nulla "tenus privati hominis eminuere poſſunt, "niſi magiſtratus factum illud cauſa prius "probe cognita adprobarent." He cites ſeveral other Authors, who concur with him in all the Doctrines delivered in the Paſſages above tranſcribed: and in England likewiſe, that ſuch Grants were conſidered as Monopolies, appears from the Statute againſt Monopolies, 21 Jac. I. cap. 3. § 8. which provides, that the Act ſhall not extend to any Patents of Privilege concerning Printing or the making of Ordnance, etc. By 1mo Rich. III. c. 9. which reſtrains Aliens from uſing any Handicrafts, (except as Servants to Natives,) it is provided that they may import printed or written Books, to ſell at their Pleaſure. This was repealed by 25mo Henr. VIII. c. 15. upon a Narrative, that it had been enacted, becauſe there were few Printers in the Realm at the Time, but that now there were many cunning and expert in that Science or Craft, as alſo many that lived by the Craft and Myſtery of Bookbinding. This Act likewiſe provides, that the Prices of Books exceſſively rated, ſhall be qualified by the Lord Chancellor and others.

Here

Here it is to be obſerved, that the Narrative of this Petition differs from the Subſumption; and that the firſt is juſtly and accurately expreſſed, the other not ſo. The Narrative does not allege, that, at common Law, the Authors, or Bookſellers who purchaſed from them, had any Right of Property, but only ſets forth, that there had been a conſtant Uſage of ſelling Books, to be held *as* a Property; which is a plain Acknowledgement by the Petitioners themſelves, that there was here no real Right of Property, but only ſomething which they had been pleaſed to view as a Sort of Property, or compare or liken to a real Property. But the Subſumption immediately infers from this, that they actually had a real Property, intitled to the Protection and Aid of the Law, which, however artful, is plainly inconſiſtent and inconcluſive.

11th January 1709. "Mr. Wortley, according to Or-
"der, preſented to the Houſe, a Bill for the Encourage-
"ment of Learning, and for *ſecuring the Property of Co-*
"*pies of Books to the rightful Owners thereof*; and the ſame
"was received, and read the firſt time.
"Reſolved, That the Bill be read a ſecond time."

14th January 1709. "Ordered, That the Bill for En-
"couragement of Learning, and for ſecuring the Pro-
"perty of the Copies of Books to the rightful Owners
"thereof, be read a ſecond trme upon Thurſday morning
"next."

Further Conſideration of this Bill lay over till the 2d of February 1709; when

"A Petition of the poor diſtreſſed Printers and Book-
"binders, in behalf of themſelves, and the reſt of the
"ſame Trades, in and about the Cities of London and
"Weſtminſter, was preſented to the Houſe, and read;
"ſetting forth, That the Petitioners having ſerved ſeven
"years Apprenticeſhip, hoped to have gotten a comfort-
"able Livelihood by their Trades, who are in Number at
"leaſt 5000; but, by the Liberty lately taken of ſome
"few Perſons printing Books to which they have no Right
"to the Copies, is ſuch a diſcouragement to the bookſel-
"ling Trade, that no Perſon can proceed to print any
"Book without conſiderable Loſs, and conſequently the
"Petitioners cannot be employed; by which Means the

"Petitioners

" Petitioners are reduced to very great Poverty and Want;
" and praying, That their deplorable Caſe may be effec-
" tually redreſſed, in ſuch manner as to the Houſe ſhall
" ſeem meet.

" Ordered, That the Petition do ly upon the Table un-
" til the Bill for Encouragement of Learning, and for ſe-
" curing the Property of Copies of Books to the right-
" ful Owners thereof, ſhall be read a ſecond Time.

" Ordered, That the Bill be read a ſecond Time, upon Saturday morning next."

Here the poor Printers and Bookbinders are introduced *in forma pauperis*, to revive and ſecond the Petition of Meſſrs. Mortlock, Tonſon, and other rich London Bookſellers, which ſeems to have been neglected. It will not eſcape Notice, that the Fact upon which this Petition reſts, does by no means infer the Concluſion: For how ſhould the printing of books make Printers or Binders lack Employment, and reduce them to Poverty and want?

4th February 1709. " Ordered, That this Bill be read a ſecond Time, upon Thurſday Morning next.

9th February 1709. The Bill was read a ſecond Time.

It was ordered, that the Bill be committed.

" Reſolved, That the Bill be committed to a Commit-
" tee of the whole Houſe.

" Reſolved, That this Houſe will, upon this Day ſe'en-
" night, reſolve itſelf into a Committee of the whole Houſe
" upon the ſaid Bill."

16th February 1709. " Reſolved, That this Houſe will,
" upon Tueſday Morning next, reſolve itſelf into a
" Committee of the whole Houſe, upon the Bill for En-
" couragement," *&c.*

" 21ſt February 1709. " The Houſe reſolved itſelf into
" a Committee of the whole Houſe, upon the Bill for En-
" couragement, *&c.* Mr. Speaker left the Chair. Mr.
" Compton took the Chair of the Committee. Mr. Speak-
" er reſumed the Chair.

" Mr. Compton reported from the ſaid Committee, That
" they had gone through the Bill, and made ſeveral Amend-
" ments, which they had directed him to report, when the
" Houſe were pleaſed to receive the ſame.

" Ordered,

" Ordered, That the Report be received upon Saturday " Morning next."

25th February 1709. " Mr. Compton, according to " Order, reported from the Committee of the whole Houſe, " to whom the Bill for Encouragement, *&c.* was commit- " mitted, the Amendments they had made on the Bill, and " he read the ſame in his Place, and afterwards delivered " them in at the Clerk's Table, where they were once read " throughout, and then a ſecond Time one by one; and, " upon the Queſtions ſeverally put thereupon (with Amend- " ments to ſome of them), agreed unto by the Houſe. " A Clauſe was offered to be added to the Bill, That if any " Perſon ſhall incur the Penalties of the Act in Scotland, " they ſhall be recoverable in the Court of Seſſion there; and " the ſame was twice read: And upon the queſtion put " thereupon, agreed unto by the Houſe to be made Part " of the Bill; and ſome other Amendments were made by " the Houſe.

" Ordered, That the Bill, with the Amendments, be in- " groſſed."

14th March 1709. " An ingroſſed Bill for the Encou- " ragement of Learning, by *veſting the Copies* of printed " Books in the Authors or Purchaſers of ſuch Copies, " during the Times therein mentioned," was read the third time. " An Amendment was propoſed to be made to " the Bill, *pr.* 3. *l.* * to leave out " Refuſed;" and, in- " ſtead thereof, to inſert " Refuſing:" And the ſame was, " upon the Queſtion put thereupon, agreed unto by the " Houſe, and the Bill amended at the Table according- " ly.

" Reſolved, That the Bill do paſs, *and that the Title be*, " A Bill for the Encouragement of Learning, *by veſting* " *the Copies* of printed Books in the Authors or Purchaſers " of ſuch Copies, during the Times there mention- " ed.

" Ordered, That Mr. Compton do carry the Bill to the " Lords, and deſire their Concurrence thereunto."

Here it is material to advert, that the Title given to the Bill when ingroſſed, and the Title the Houſe reſolved it ſhould bear, when they paſſed it, is extremely different from the Title the Bill had when preſented by Mr. Mortley,

(11th January) and till it was ingroſſed: For the Title it had, when preſented by Mr. Wortley, and till its ingroſſment, was, "A Bill for the Encouragement of Learning, "*and for ſecuring the Property* of Copies of Books to the "*rightful Owners* thereof:" Which plainly ſuppoſes, and implies, that the Authors or Purchaſer of Books, had *ab ante* a rightful Property in the Copies; whereas the Title given to the Bill, when ingroſſed and paſſed, *viz.* "A Bill "for the Encouragement of Learning, by *veſting* the Co-"pies of printed Books in the Authors or Purchaſers of "ſuch Copies, during the Times therein mentioned," as plainly ſuppoſes, and implies, that the Authors or Purchaſers had no Right of Property, but what was veſted by this Act, and would have none after the Times mentioned therein ſhould expire.

5th April 1710. The Houſe proceeded to take into Conſideration the Amendments made by the Lords to the Bill, intitled, "An Act for the Encouragement, *&c.*" and the ſame were read, and are as follow.

The firſt four Amendments being of no Conſequence, it is needleſs to inſert them.

The next is, "Leave out from allowed to provided;" that is the Proviſo intended to prevent exorbitant Prices. All the other Amendments were likewiſe of no conſequence, except the following Proviſo, propoſed to be added to the End of the Bill; which is as follows. "Pro-"vided always, That after the expiration of the ſaid "Term of fourteen Years, the ſole Right of printing or "of diſpoſing of Copies ſhall return to the Authors there-"of, if they are then living, for another Term of fourteen "years."

All the Amendments were agreed to, except that reſpecting the Prices.

Ordered, That a Committee be appointed to draw up Reaſons to be offered to the Lords at a Conference, for diſagreeing to the ſaid Amendment; and it was referred to Mr. Secretary Boyle, and ſeveral others, (of whom Mr. Addiſon was one), who were ordered to withdraw immediately into the Speaker's Chamber, and report to the Houſe.

Mr. Compton reported from the Committee, That they had

had drawn up Reaſons, which he read in his Place, and afterwards delivered in at the Clerk's Table; and are as follows. "The Commons diſagree to your Lordſhips A-
" mendments in pr. 3, l. 14. *Firſt*, Becauſe Authors
" and Bookſellers, having the ſole property of printed
" Books *veſted in them by this Act*, the Commons think it
" reaſonable, that ſome Proviſion ſhould be made, that
" they do not ſet an extravagant Price on uſeful Books,
" 2*dly*, Becauſe the Proviſion made for this Purpoſe, by
" the Statute 25th Henry VIII. chap. 15. having been
" found to have been ineffectual, and not extending to
" that Part of Great Britain called *Scotland*, it is neceſſary
" to make ſuch a Proviſion as may be effectual, and
" which may extend to the whole united Kingdom.

" Ordered, That Mr. Compton do go to the Lords,
" and deſire a Conference with their Lordſhips, upon the
" Subject-matter of the Amendments made by their Lord-
" ſhips to the ſaid Bill."

" Same Day, Mr. Compton reported, That they had
" been at the Conference, and that they had given the
" Lords the Reaſons for diſagreeing to the ſaid Amend-
" ment."

" A Meſſage from the Lords, by Sir Robert Legard,
" and Mr. Fellows. Mr. Speaker, the Lords do not in-
" ſiſt upon their Amendment to the Bill, intitled, "An
" Act for the Encouragement," *etc.*; and then the Meſ-
" ſengers withdrew."

The Clauſes of the Act, which it is neceſſary to attend to in this queſtion, are as follow.

" Whereas Printers, Bookſellers, and other Perſons,
" have of late frequently taken the Liberty of printing,
" reprinting, and publiſhing, or cauſing to be printed,
" reprinted, and publiſhed, Books, and other Writings,
" without the Conſent of the *Authors or Proprietors* of ſuch
" Books and Writings, to their very great Detriment, and
" too often to the ruin of them and their families. For
" preventing therefore ſuch Practices for the future, and
" for the Encouragement of learned Men to compoſe and
" write uſeful Books, be it enacted, That, from and after
" the 10th of April 1710, the Author of any Book or
" Books already printed, who hath not transferred to

" any other the Copy or Copies of ſuch Book or Books, " Share, or Shares thereof, or the Bookſeller or Book- " ſellers, Printer or Printers, or other Perſon or Perſons, " who hath or have purchaſed or acquired the Copy or " Copies of any Book or Books, in order to print or re- " print the ſame, ſhall have the *ſole Right and Liberty* of " printing ſuch Book and Books, for the Term of one " and twenty years *, to commence from the ſaid 10th " Day of April, *and no longer*; and that the Author of " any Book or Books already compoſed, and not printed " and publiſhed, or that ſhall hereafter be compoſed, and " his Aſſigney or Aſſigns, ſhall have the *ſole Liberty of* " *printing and reprinting* ſuch Book and Books, for the Term " of fourteen years, to commence from the day of the firſt " publiſhing the ſame, *and no longer*." Then follow the Penalties on Tranſgreſſors of the Act, and Proviſos for entering in Stationers-Hall, preſenting Copies to the Univerſities, and regulating the Prices. " Provided, That " nothing in this Act contained ſhall extend, or be con- " ſtrued to extend, *either to prejudiſe or confirm* any Right " that the ſaid Univerſities, or any of them, or any Per- " ſon or Perſons, have, or claim to have, to the printing " and reprinting any Book or Copy already printed, or " hereafter to be printed: Provided always, that after the " Expiration of ſaid Term of fourteen Years, the ſole " Right of printing, or diſpoſing of Copies, *ſhall return* " to the Authors thereof, *if they are then living*, for *an-* *other* Term of fourteen Years †.

As the Act expreſsly declares, that Authors, Printers, and Bookſellers, ſhall have the *ſole* Right and Liberty of printing for a certain Number of Years, and *no longer*, it ſurely would, to common Reaſon, appear extremely plain, that, after that certain Number of Years was elapſed, they had no ſole and excluſive Right, but that afterwards any Perſon might print who had a mind. But the London

* Here it appears plainly, that all Monopolies of Books that had been printed prior to 10th April 1710, were by this Statute reſtricted to twenty-one years after that Period, which cuts off all Claims of Right by common Law.

† It is clear, by this Clauſe, that if the Author dies within fourteen Years after Publication, the Monopoly ceaſes at that Period, as his being alive after that Time, is made an expreſs Condition for continuing the Monopoly for 14 Years longer. This ſhews alſo, there is no Right at Common Law.

Bookſellers, whoſe great Stocks, and Reſidence in the Capital, had enabled them to purchaſe all the Books of any Reputation, that have been written in this country, though they had made immenſe ſums by the excluſive Right of printing theſe Books during the Time mentioned in the Statute; yet would they not be contented, but grudged to others the Gleanings of a Harveſt by which they had been enriched; and therefore reſolved, if poſſible, to vindicate to themſelves a perpetual Right of Monopoly.

With this View, they thought proper to maintain, that an Author or Bookſeller, who purchaſed from him, had, at common Law, independent of, and antecedent to the Statute, a Right of Property that gave them an excluſive Privileges to print and ſell: That the Statute was not a reſtrictive, but an accumulative Law, which did not create a new Species of Property, but ſecured by Penalties a Property that exiſted before. And, upon this Principle, they pretended a right of Monopoly in the Works of Milton, Shakeſpear, and many other Authors, who had been dead more than eighty or a hundred Years before; and inſiſted, that it was competent for them, without the Aid of the Statute, by the interpoſition of the ordinary Courts of Juſtice, to reſtrain others from printing Books of which they claimed the Property, and make them liable for Damages, in caſe they had printed ſuch Books. And accordingly they have attacked, at different Times, ſeveral Bookſellers both in England and Scotland. But it is remarkable, that they have never once attempted to call the Bookſellers of Ireland to account, though they have ſuffered moſt by them; which ſeems to indicate, that they themſelves have no Faith in this new Doctrine, of a Right at common Law, which muſt have ſupported them equally in Ireland as in Britain, though the Statute of Queen Anne could not reach that Country.

The firſt Perſon who incurred their Diſpleaſure, was Mr. Oſborne Bookſeller in Pater-Noſter Row, London, who printed an Edition of Shakeſpear, in Oppoſition to one undertaken by ſome of the moſt noted Bookſellers in London, and moſt active Champions of the Common Law. Him they proſecuted, and threatened, in the

the moſt terrific Manner; but Mr. Oſborne having calmly anſwered, That, if they talked any more to him in that Style, he would print a Dozen of Books to which they had ſuch pretended Rights. They immediately, and juſtly, took the Alarm, and were glad to take the half of the Impreſſion off his Hands, at the Price he was pleaſed to put upon it*, beſides allowing him, as it is ſaid, an annual Penſion, which he enjoys to this Day, to buy him off from reprinting upon them.

The next Diſpute they had was with the Bookſellers of Edinburgh and Glaſgow. Theſe, as well as the Bookſellers in the different Towns in England, had long been no more than Retailers to the great London Bookſellers, and gained but very inconſiderable Profits. The ſcanty Subſiſtence they earned by this ſubordinate Trade, ſet them upon aiming at a higher. With this View they began to print for themſelves, and ſoon arrived at a very conſiderable Degree of Perfection. Glaſgow produced the fineſt Editions of the Greek and Latin Claſſics ever the World ſaw; and both there and at Edinburgh the Works of ſome of the beſt Engliſh Authors were printed with the greateſt Elegance and Correctneſs. This the jealous Eyes of the London Bookſellers could not long endure; and therefore they brought before the Lords of Seſſion in Scotland, an Action againſt the Bookſellers of that Country, which was litigated with much obſtinacy by the Parties, and argued with great Ability by the Counſel on both Sides. As the Reaſoning in this Caſe muſt contribute very much to elucidate the Nature of literary Property, and the Statute of Queen Anne; and as the Judgement given is a Deciſion in Point, a Tranſcript of both, it is imagined, will not be unacceptable to the Reader. The Caſe is reported both by Mr. Falconer † and the learned Lord

* This Anecdote is told in the Memorial and Condeſcendence for Meſſrs. Hamilton and Balfour, in the Queſtion before the Court of Seſſion, beiween them and the London Bookſellers: and it is there added, "If the Purſuers will run the Riſk "of conteſting the Fact, the Defenders "will undertake to prove it." It does not appear from the Papers on the other Side, that the Fact was ever conteſted.

† Vol. 1. No. 256. 7th June 1748, The Bookſellers of London, againſt the Bookſellers of Edinburgh and Glaſgow.

Kaims †, but more fully by his Lordſhip, who was one of the Counſel in the Cauſe. His words are:

" Some Bookſellers of London brought a Proceſs a-
" gainſt the Bookſellers of Edinburgh and Glaſgow, ſet-
" ting forth, that the Defendants had all of them preſumed
" to tranſgreſs the Statute 8vo *Annæ*, by printing, reprint-
" ing, or importing, or publiſhing and expoſing to Sale,
" the ſeveral Books ſpecified, without Conſent of the Pro-
" prietors; and therefore concluding for the Penalties
" and forfeitures of the Statute; at leaſt, that the Defen-
" dants ought to pay Damages to the Complainers for e-
" very ſurreptitious Copy. The Purſuers, not being able
" to bring Evidence by Witneſſes of any act tranſgreſſing
" the Statute, waved all Penalties, and reſtricted their Libel
" to Damages, or rather to the Profits which the Defendants
" were ſuppoſed to have made by dealing in an illicit Trade;
" and to bring out the extent of theſe Profits, they prayed a
" Diſcovery by the Oaths of the Defendants. The Claim for
" Damages thus reſtricted was put upon this Footing, that
" by the Statute a Property is given to Authors of the Books
" publiſhed by them, which of itſelf is ſufficient to found a
" Claim of Damages; becauſe every Proprietor is intitled to
" Reparation and Damages at common Law againſt thoſe
" who incroach upon his Property. The Property of e-
" very Book (ſaid the Purſuers) is declared by the Act to
" belong to the Author and his Aſſigns; which implies,
" that this Proprietor ſhall be intitled to every competent
" Action for defending his Property againſt the unjuſt In-
" vaſions of others, and obtaining Relief to the extent of
" his real Intereſt or Damage. And the relief ariſing
" from the Property thus declared, cannot be barred or
" excluded by the ſpecial Penalties ſuperadded in the Sta-
" tute; which were intended as a further Reſtraint againſt
" the Wrongs and Abuſes recited in the Preamble, but
" could never be intended to put Proprietors of Books in
" a worſe Condition, than if ſuch Penalties had not been
" enacted.

The Defendants, on the other hand, to prove that no

† Remarkable Deciſions of the Court of Seſſion, No. 92. 7th June 1748, Daniel Midwinter and others, Bookſellers in London, againſt Gavin Hamilton, &c.

" Action

" Action of Damages can be ſuſtained upon this Statute " ſeparately, nor upon it conjoined with the common Law, " premiſed the following Obſervation. It is a Rule, that " Laws which abridge the common Privileges of Man- " kind are ſtrictly to be interpreted: Monopolies and Re- " ſtraints are introduced by Statute contrary to natural " Liberty, debarring the Lieges either abſolutely, or in " favour of certain Perſons, from doing certain Things " which are otherwiſe innocent and lawful. But whatever " be the Expediency of ſuch Statutes, they are not to be " extended by Judges beyond their preciſe Terms. It " would be groſs Injuſtice ſo to extend them: It would " be abridging natural Liberty without the Authority of " Law, which is worſe than private Violence. Thus " Members of the College of Juſtice are prohibited to " purchaſe Pleas, under a Penalty that the Purchaſer ſhall " be degraded from his office. But, as ſuch Purchaſes " are not declared null and void, the Purchaſe *is effectual* " *in Law.* Hunting in Woods, Parks, *etc.* without Li- " cenſe of the Owner, is diſcharged by Statute under " certain Penalties. Here is a Monopoly of Wild-Fowl " granted to every Gentleman within his own Incloſures; " yet if one tranſgreſs the Statute, the Proprietor may " ſue for the Penalty, but has no Claim for Damages, nor " even a Claim for the Wild-Fowl taken. There are ma- " ny ſtatutory penalties againſt thoſe who kill Salmon in " forbidden Time; by this Practice thoſe who have Right " to Salmon-fiſhing undoubtedly ſuffer; yet, as this is " only a ſtatutory Wrong, no Action of Damages can lie; " becauſe ſuch Action is not given by any of the Statutes. " And yet the Prohibition of dealing in priviledged " Books, is not ſtronger than the Prohibition of killing " Salmon in forbidden Time. The like Obſervation oc- " curs upon the Statutes prohibiting Cruives in ſalt Wa- " ter under certain Penalties. Bleaching of Linen-cloth " with Lime or Pigeon-dung is prohibited under the Pe- " nalty of Confiſcation of the Cloth, and a pecuniary " Fine: but the Purchaſer who ſuffers thereby has not an " Action of Damages. By the Statutes eſtabliſhing the " Poſt-office, private Carriers are prohibited under a Pe- " nalty to carry Letters; yet an Action of Damages will

" not

" not ly at the Inſtance of the King or Poſt-maſter againſt " thoſe that tranſgreſs the Law. And, not to multiply " Inſtances, which are without End, Would an Action " of Damages be competent at the Inſtance of the Eaſt- " India Company againſt Interlopers? Such an Action " was never imagined.

" This Doctrine in general is not controverted by the " Purſuers, who place their whole Strength upon the a- " bove-mentioned Speciality, that, by the Statute under " Conſideration, a *Property* is beſtowed upon Authors " and their Aſſigns; and therefore this Argument muſt " be deliberately examined. When a Man compoſes a " Book, the Manuſcript is his Property, and the whole " Edition is his Property after it is printed. But let us " ſuppoſe that this whole Edition is ſold off, where is " then his Property? As Property, by all Lawyers, an- " cient and modern, is defined to be *jus in re*, there can " be no Property without a Subject. The Books that re- " main upon Hand, are, no doubt, the Property of the " Author and his Aſſigns; but, after the whole Edition is " diſpoſed of, the Author's Property is at an End; there " is no Subject nor *corpus* of which he can be ſaid to be " Proprietor. All that remains with him is an excluſive " Privilege granted by the Statute, of reprinting this " Book, and of barring others from reprinting or vending " it under certain Penalties. It is neither more nor leſs " than creating a Monopoly, barring others from dealing " in that particular Commodity; the direct Conſequence " of which is, that, ſo far as reſtrained by Statute, they " muſt ſubmit; but that, in all other Particulars, their " natural Liberty is preſerved entire.

" It is true, this Monopoly or excluſive Privilege is na- " med a *Property* in the Statute: and ſo it is in one Senſe, " becauſe it is *proper* or peculiar to thoſe to whom it is gi- " ven by the Statute. But then it was not intended to be " made *Property* in the ſtrict ſenſe of the Word; for we " cannot ſuppoſe the Legiſlature guilty of ſuch a groſs " Abſurdity, as to eſtabliſh Property without a Subject " or *corpus*: theſe are relative Terms which cannot be " diſjoined; and *Property*, in a ſtrict Senſe, can no more " be conceived without a *corpus*, than a Parent can be

" conceived without a Child. But if the Words of the " Statute ſhall be laid hold of, neglecting its Spirit and " Meaning, all that can be concluded is, that it is a Pro- " perty *ad certum effectum* only, granted in order to ſup- " port the ſeveral Actions and Penalties directed by the " Statute. It is a ſtatutory Property, and not a Property " in any juſt Senſe to be attended with any of the Effects " of Property at common Law. And indeed this Argu- " ment is ſo concluſive againſt the Suppoſition of real " Property, that the Purſuers have been obliged to yield " in ſome meaſure to it, by admitting, that this is not a " real Property in any Subject or *Corpus*, but only a *quaſi* " Property. This is admitting all that is demanded; " for let them convert this Law-term into common Lan- " guage, and they will not be able to make it any Thing " different from that Monopoly or excluſive Privilege " which is eſtabliſhed by the Statute. It is clear then, " that, after all the Buſtle made by the Purſuers, about " Property, and the Effects of it at common Law, they " have not advanced one Step. The only Ground they " have to take up is, to maintain, if they can, this Pro- " poſition, that from their *quaſi* Property or excluſive Pri- " vilege, the ſame Actions ariſe at common Law, that are " the Conſequence of Property taken in its ſtrict Senſe: " but they will not venture to take up this Ground, be- " cauſe it is untenible. Any wilful Incroachment upon " real Property is a moral Wrong condemned by the Law " of Nature, and by the Laws of all Nations; which " therefore ought to be repaired. But an Incroachment " upon a Monopoly, or an excluſive Privilege, has no- " thing naturally immoral in it, is not *malum in ſe*; and " therefore does not fall under any Sanction of the com- " mon Law. It is a ſtatutory Wrong, to be judged of " ſolely upon the Statute; and therefore no Action can ly " to redreſs ſuch a Wrong, but what is authoriſed by the " Statute.

" And here a Reflection muſt occur, which cannot fail to " make an Impreſſion. The Argument advanced for the " Purſuers, taken in its ſtrongeſt Light, muſt reſolve into " the following Propoſition: That no Action of Damages " was intended by the Legiſlature to be one of the Means

" for

" for ſecuring to Authors the Benefit of their own Works;
" and that the only Purpoſe of declaring a Property to
" Authors in their own Works, was in order to found this
" Action. If ſo, the Matter has been aukwardly gone a-
" bout; for, not to inſiſt upon it, that this declared Pro-
" perty is not to be found in the enacting Clauſe, where
" it ought to have been, but only comes in by the by as a
" Figure of Speech; was it not much eaſier for the Le-
" giſlature to give this action of Damages in plain Words,
" without attempting ſuch an Abſurdity as to declare a
" a Property, without any Subject or *corpus* to which it
" may relate? This very Conſideration, not to go fur-
" ther, makes it extremely evident, that the Legiſlature
" never intended, in this Caſe, either a Thing ſo inexpe-
" dient as an Action of Damages, nor a Thing ſo abſurd
" as a real Property. Had they intended an Action of
" Damages, they would ſaid ſo in plain Terms. And it
" muſt be obſerved, that though it is not in the Power
" even of the Legiſlature to eſtabliſh Property without a
" Subject, it was very conſiſtent to afford an Action of
" Damages without Suppoſition of any thing like Proper-
" ty: for an Action of Damages may ly upon a Statute,
" as well as upon Property, at Common Law *.

In the *ſecond* Place, ſuppoſing ſo abſurd a Thing as that
" a real Property is eſtabliſhed by the Statute, it appears
" evident, that the Purſuers can take no Advantage of it,
" when they have not fulfilled the Conditions upon which
" it is granted. The very firſt Clauſe of the Statute,
" which talks of beſtowing the Property upon the Au-
" thor,

* It appears from Falconer, and from the printed Papers in this Cauſe, (lodged in the Advocates Library along with the other Vouchers of Lord Kaims's Remarkable Deciſions), that the Engliſh Bookſellers alleged, that the Practice of the Court of Chancery ſtood in their Favour; and produced alſo Opinions from two eminent Engliſh Counſel in ſupport of their Demand.

With regard to the Practice of the Court of Chancery, the Scottiſh Bookſellers admit, that Injunctions had ſometimes been granted, ſtopping the printing and ſelling of Books, but theſe Injunctions paſs of courſe in Abſence of the Defendant, and often without his being allowed to give in Anſwers to the Bill of Complaint filed againſt him: And they deny, that ever any definitive Judgement was given by the Court of Chancery upon the Point. It would appear, that the Court of Seſſion had allowed the Scottiſh Bookſellers ſome time to inquire into the Practice of the Court of Chancery, and that upon Inquiry being made, the Engliſh Bookſellers gave it up. For the Scottiſh Bookſellers, in their Memorial and Condeſcendence, ſigned by two Counſel, ſet forth, that " when they (the Engliſh Bookſellers) ſaw " that, by your Lordſhips kind Indulgence, " the Defenders were allowed a competent " Time

" thor, is what follows: " And whereas many perſons may, " through Ignorance, offend againſt this Act, unleſs ſome " Proviſion be made whereby the Property in every ſuch " Book, as is intended by this Act to be ſecured to the

" Time for inquiring into theſe Precedents, " in their laſt Anſwers, they fairly gave " up any ſuch Precedents; on this Pre- " tence, forſooth, that the Engliſh were " a very tame and peaceable People, and " would put up with Injuries, rather than " go to Law; tho' it is very well known in " all Europe, that they are the moſt ſtaunch " nation in the World, for maintaining " their Rights and Privileges, and do not " care what Expence they throw out."

As to the Opinions of the Engliſh Counſel, What they were, and what Obſervations were made upon them, on behalf of the Scottiſh Bookſellers, will be beſt explained by inſerting a Paſſage from one of the Papers for the Defenders, in which they are ſtated and conſidered. " They " are inconſiſtent with one another, and " none of them very conſiſtent with the " Statute. The Gentleman whoſe Report " is firſt introduced, gives his Opinion, " That Authors and Proprietors, waving " Penalties, have Recourſe to a Court of " Equity, which proceeds upon the Foun- " dation of the Property declared by the " Act, and gives a ſpecific Relief, by grant- " ing Injunctions to reſtrain the printing, " publiſhing, or ſelling of pirated Editions, " and decrees them to account to the Pro- " prietors for all the Profits made by the " Sale of any Copies of a pirated Edition." " The Reſpondents, not to repeat what is " above ſaid, ſhall make this further Ob- " ſervation, that if there is a Property de- " clared by the Statute, where is the Ne- " ceſſity to recur to a Court of Equity, " ſeeing Actions conſequent upon Proper- " ty are competent in the Court of Com- " mon Law? No Anſwer can be made, " but that this is only a *quaſi* Property, " which, in plain Engliſh, is, that it is " not a Property at all, but only a Mono- " poly, or excluſive Privilege. Is it the O- " pinion of that learned Gentleman, that " upon every ſuch *quaſi* Property, an Ac- " tion of Damages muſt enſue? This will " ſcarce be maintained. The Gentleman " would not ſay ſo, were it put in this " Light to him."

It is added, " That in a Court of Equity, " it is no way material, whether the " Book be entered in Stationers Hall." " This is obviouſly miſtaking the Import " of the Act: Nay, the very Words of it, " which does not beſtow a Property abſo- " lutely and in every caſe, but only where " it is claimed and aſcertained by an Entry " in Stationers-Hall. And after all, is " there Equity in obliging a Man to ac- " count for the Profits of a Book which " an Author has left free to the Public, " to be dealt in as lawful Commerce? At " this rate, Authors would have a very " good Game of it, more beneficial than " any Thing given by the Statute. An " Author, doubtful of the Succeſs of his " Work, may let it go Abroad, without " claiming a Privilege: If the Edition " does not ſell, the Loſs lands upon the " Publiſher; and if beyond Expectation " the Book takes a run, the poor Publiſh- " er muſt account for all the Profits. This " is, Evens, I win; and, Odds, you loſe.

" But to ſhow how little to be truſted " ſuch Opinions are, obtained by the So- " licitation of Parties, the two Opinions " given are quite inconſiſtent with one " another. The other Gentleman main- " tains, " That Authors have the ſame " Right to a Satisfaction for any Damage " in this, as in any other Property, by an " Action on the Caſe at Law, or by a Suit " in Equity," *etc.* If by an Action on the " Caſe at Law, the Damage muſt be tried " in a Court at Common Law, and con- " ſequently by a Jury; this differs wide- " ly from the former Opinion, and from " what has been pleaded all along by the " Purſuers; for it reſolves into conſider- " ing this Monopoly as a real Property, " in the ſtricteſt ſenſe, and conſequently " in giving Damages to the full Extent, " without any Limitation."

M. Blackſtone, who ſeems to lean to the ſide of the Engliſh Bookſellers, in the Paſſage of his Commentaries referred to above, acknowledges, that " neither with " us in England, hath there been any di- " rect Determination upon the Right of " Authors at Common Law;" tho' he is pleaſed to ſay, much may be *gathered* from the Injunctions of the Court of Chancery. But, as has been already obſerved, theſe being got by the Plaintiff, on his making Oath of the Property's being his, without allowing the Defendant Time to anſwer, ſuch Injunctions prove nothing; and of theſe more by and by.

" Proprietor

" Proprietor, may be aſcertained; as likewiſe the Con-
" ſent of ſuch Proprietor, for printing or reprinting, may
" from Time to Time be known; be it therefore further
" enacted, that nothing in this Act contained ſhall be
" conſtrued to extend to ſubject any Perſon to the For-
" feitures and Penalties therein mentioned, unleſs the
" Title to the Copy ſhall, before Publication, be entered
" in the Regiſter-book of the Company of Stationers, and
" unleſs ſuch Conſent of the Proprietor be in like Manner
" entered." Here two things are plainly implied, or ra-
" ther expreſſed: *Firſt*, That the Property is not intend-
" ed to be beſtowed in every Caſe; for the Words
" are, *Whereby the Property, in every ſuch Book as is*
" *intended by this Act to be ſecured to the Proprietor,*
" *may be aſcertained.* And, *2dly*, The Property is not
" beſtowed directly upon compoſing, but is to be claim-
" ed or aſcertained in a certain Form eſtabliſhed in the
" Statute, *viz.* by entering in Stationers-hall, the name
" of the Book, and the Author's Conſent for printing the
" the ſame. Upon theſe Conditions the Property is be-
" ſtowed, and not otherways. Nor does this Argument
" land in a Criticiſm upon Words; it is founded on the very
" Nature of the Thing. For if it be true in fact, that
" many Perſons of Diſtinction amuſe themſelves with com-
" poſing Books, without intending to take any pecunia-
" ry Beneſit by the Publication, muſt it not be competent
" to every Mortal to deal in ſuch Books, as much as it was
" to deal in all Books before excluſive Privileges were in-
" vented? It follows therefore, that every Author who
" intends to make Profit of his Works, muſt ſignify the
" ſame to the Public; or, in the Language of the Sta-
" tute, muſt have the Property aſcertained to him. And as
" the Method for claiming or aſcertaining this Property is
" alſo laid down in the Statute, there muſt be eſtabliſhed
" a *præſumptio juris et de jure*, that every new Book which is
" not thus entered in Stationers-hall is abandoned to the
" Public, and a lawful Subject of Commerce for every
" Man to deal in.

" In the *third* Place, Suppoſing all Obſtructions remo-
" ved, which bar the Purſuers from a Property in this
" Caſe ſtrictly taken, and ſuppoſe their Property be to ſuch

" as

" as to afford the ſame Actions that may be founded on
" real Property; yet it does not appear that they could
" take any benefit from theſe Conceſſions. For how are
" Damages to be aſcertained? The only Footing to go
" upon is, to ſhow how far the Proprietor's Sale is leſſened
" by Interlopers. But this can never be determined other-
" ways than by mere Conjecture: the Proprietor himſelf
" cannot be certain that the Perſons who dealt with the In-
" terlopers would have purchaſed from him; without
" which the aſcertaining Damages is beyond the reach of
" Law. And the Purſuers tacitly yield this Point, when
" they agree to confine their Claim of Damages to the
" ſuppoſed Profits made by the Defendants. Their Claim
" ſo qualified does indeed relieve them of ſome Part of the
" Difficulty of Proof, by no means of the whole: becauſe
" an Interloper, who has ſome Part of a piratical Edition
" in his Poſſeſſion, cannot know what Profit he makes till
" the whole be ſold off. But to let this paſs; where is the
" Foundation in Law, Equity, or Common Senſe, to de-
" prive the Defendants even of their Profits, unleſs the
" Purſuers can ſpecify that they have ſuffered thereby?
" If their Sale be not leſſened, they have no juſt Ground
" of Complaint. Let us give an Example, which ſhall be
" *Millar's Dictionary*, publiſhed in two Folios, and ſold
" at a Price beyond the Reach of common Gardeners. If
" a Printer ſhall undertake an Impreſſion of this Book
" on a very ſmall Type and very coarſe Paper, which will
" be purchaſed only by common Gardeners, *Philip Millar*
" and his Aſſigns will not loſe a Shilling by this Edition:
" yet, by this low-priced Book, Knowledge in Garden-
" ing is ſpread much to the Benefit of the Public. Would
" it be reaſonable or juſt, to deprive ſuch an Undertaker
" of his Profits, when the Public gain by the Underta-
" king, and Mr. Millar loſes nothing? It is obvious, then,
" that this Claim for Profits cannot be ſupported leſs or
" more as a Claim of Damages, when there is really no Da-
" mage to the Party privileged, or, which is the ſame,
" where Damages cannot be proved.

" In the *fourth* Place, As it has been made evident that
" no Action for Damages can ly upon this Statute, nor ariſe
" out of it; it will be equally evident, that the Legiſ-

" lature

" lature never intended to afford ſuch a Remedy againſt
" Interlopers, not only for a Reaſon given above, but
" alſo for the following Reaſon, that it muſt have been
" foreſeen, that ſuch an Action would have no other Ef-
" fect than to lead People into inextricable Proceſſes; it
" being impoſſible, in the Nature of Things, to aſcertain
" Damages in any ſatisfactory manner, to be the Founda-
" tion of a Judgement of a Court. Can we believe that
" this matter has been overlooked by all the Princes in
" Chriſtendom, who are in Uſe to give Privileges to Au-
" thors? For we ſhall find not one Example of giving an
" Action of Damages among the many Checks that have
" been contrived to ſecure to Authors the Monopoly of
" their own Works. In lieu of Damages, the conſtant
" Rule is, to confiſcate the Books, or Part thereof, to
" the Author, and to give him over and above a Lump Sum
" in name of Penalty upon the Tranſgreſſor. And when
" we conſider the preſent Statute, it is not even ſo
" favourable to Authors, as are the Patents which have
" been commonly given by Sovereign Princes. Far
" from affording an Action of Damages, it does not go
" ſo far as theſe Patents in giving a Lump Sum to the Au-
" thor in name of Damages. It does not give to the Pro-
" prietor even the Books forfeited; which are ordered to
" be damaſked, and made waſte Paper of.

" Further, there is ſcarce one Clauſe in the Statute that
" is not directly or indirectly inconſiſtent with this ſuppoſed
" Claim of Damages. In the *firſt* Place, Damages are not
" overlooked; for an Action is given to every Univerſity
" for the Value of every undelivered Copy, with full
" Coſts of Suit: Damages are given in this Caſe, becauſe
" they may be legally aſcertained. The ſame Conſidera-
" tion muſt have occurred with regard to the Author; but
" to him Damages are not given, becauſe they cannot be
" aſcertained, 2*dly*, Allowing the Defendants to plead
" the general Iſſue in any Action or Suit commenced in
" purſuance of this Act, is a Proof that the Legiſlature
" had no View of Damages to be claimed in a Court of
" Equity: Every Action that can be commenced in pur-
" ſuance of this Act muſt go before the Courts of Common
" Law, and be determined by a Jury. 3*dly*, All Actions,

" Suits,

" Suits, *etc.* upon this Statute ſhall be commenced with-
" in three months, *etc.* This could not have been the
" Caſe, had there been any View of an Action of Dama-
" ges; which in its Nature is perpetual. And, *laſtly*, No
" Action of Damages can ly while the Claim for the Penal-
" ty ſubſiſts. Now it is a ſtrange Action of Damages
" which the Proprietor can be deprived of, by any one
" commencing a popular Action for the Penalty. What
" if the Proprietor ſhall commence his Action for Dama-
" ges within three months, and thereafter a popular Ac-
" tion be raiſed for the Penalties alſo within three Months;
" Which of theſe Purſuers ſhall yield to the other? for it
" is plain, that both Actions cannot ſubſiſt together. The
" Claim for the Penalty, it is ſuppoſed, would be prefer-
" red, being founded in the expreſs Words of the Sta-
" tute. At this Rate, an abſolute Stranger ſuing for Pe-
" nalties, ſhall cut out the Proprietor claiming only his
" Damages. This would be ſo disjointed a Thing as not
" to be juſtifiable upon any Sort of Principles; and it
" may ſerve for an inſtance, that there is no End of wan-
" dering, when People deſert the beaten Tract of the
" Law, and ſeek out new Paths to themſelves.

" The Purſuers endeavoured to draw an Argument to
" the preſent Caſe, from a Bill of Equity in Exchequer for
" the ſingle Duty of Beer or Ale; which is ſuſtained, wa-
" ving Penalties; the extent thereof to be diſcovered by
" the Oath of the Defendant: but in vain; for there is no
" Similitude betwixt theſe Caſes. The Act of Charles II.
" eſtabliſhing the hereditary Exciſe, provides, " That
" there ſhall be paid to King, his Heirs and Succeſſors,
" for ever, the Duties following," *etc.* under the Penalty
" of double Duty, upon Failure of Payment in the Terms
" appointed. Here is precifely a Debt eſtabliſhed by the
" Statute; which may be recovered by a common Action
" of Debt, as well as by a Bill in Equity. But, will it follow
" from this Inſtance, or any ſuch Inſtance, that Damages may
" be recovered either by an Action of Debt, or by a Bill in
" Equity, from a Perſon who does a Thing innocent in it-
" ſelf, and lawful by the common Law of the Land, and
" which is only diſcharged by Statute under certain Penal-
" ties? If the Perſon takes his Hazard of theſe Penalties,

" and

" pay the Forfeit, he fulfills the Law, and is no further " liable.

" *Found, That no Action lies upon the Statute, except for* " *ſuch Books as have been entered in Stationers-Hall in* " *terms of the Statute. And found, That no action of* " *Damages lies upon the Statute.*"

The Engliſh Bookſellers appealed to the Houſe of Lords; and, after hearing the Cauſe two Days, Lord Chancellor Hardwicke gave the following Opinion, according to the Letter ſtill extant, tranſmitted to the Reſpondents by their Solicitor at London. " *Die Lunæ* 11th February " 1750, Lord Chancellor, in moving the Reſolution, gave " his Opinion upon the Manner of bringing the Action, " That the Plantiffs had miſtaken the true Courſe of pro- " ceeding, by mixing an Action for the Penalties with an " Action or Suit for an Account of Profits; for ſo he con- " ſtrued the Damages prayed by the Concluſions of the " Libel; That theſe were Actions of an inconſiſtent Nature.

" The Diſcovery, on the Oath of the Defendants, might " be had in Reſpect of the one, but not of the other; and " it appeared, by the very laſt Proceeding of the Plan- " tiffs, before the Appeal brought, that they did not con- " ſider the pretended Waver of Penalties as abſolute, but " only as temporary, and were now actually inſiſting for " the Penalties: That the Plaintiffs had likewiſe blended di- " ſtinct Rights together in their Libel, and were jointly in- " tereſted only in *Chambers's Dictionary*. The Defendants too " were charged with no joint Wrong, ſo that their Offen- " ces might be as ſeparate and independent as the Right " of the Plantiffs. The Libel therefore being irrelevant, " the beſt way for the Plantiffs to take, was to begin again; " and if there had been a croſs Appeal from the Interlocu- " tors uncomplained of, the Lords might have diſmiſſed " the Action *: At preſent they could only make ſuch " Declarations as would oblige the Court of Seſſion to do " it. Upon the whole, therefore, the Libel not being re- " levant, it was premature to give any Judgement upon " the general Queſtions: One thing he threw out for Con-

* The Court of Seſſion, by two Interlocutors of December 24, 1746, and January 13, 1747, gave the Queſtion againſt the Scottiſh Bookſellers; but, by two Judgements, December 2, 1747, and June 7, 1748, (which laſt is inſerted above) their Lordſhips gave it for them; and from theſe the Bookſellers of London appealed.

" ſideration, that it might be thought of whenever the " Matter ſhould come to be argued again. As to the " Origin of the Relief given in the Court of Chancery in " theſe Caſes by Injunction and Account, he ſaid, the Sta- " tute of King James the Firſt, which took away Mono- " polies, at the ſame Time gave the King a Power to " grant Patents for the Encouragement of new Inventions, " for a Term of 14 Years. Theſe Patents were inrolled " in Chancery, and if they were infringed, the Court, up- " on Complaint of the Patentee, would take Notice of its " own Record, ſo far as to grant that Relief. The Statute " of Queen Anne, as to the Property of Authors and " Books, might be conſidered as a general ſtanding Patent " to Authors, for the Term of Years mentioned in that " Statute, and being a Record of the higheſt Nature, the " Court would give that Relief; but he doubted whether " that Statute was declaratory of the Common Law, or in- " troductive of a new Law for the Encouragement of " Learning, and to give learned Men a Property, which " they had not before, and gave ſeveral Reaſons in Sup- " port of his Opinion; and he obſerved on the Precedents " cited by Mr. Solicitor-General, in Support of the con- " trary Opinion, that they were made on Motion, and " hearing of one Side only, therefore of little Weight: " But whatever might have been the Law of England be- " fore the Statute, he ſaid, it was material to conſider how " the Common Law of Scotland was before the Statute, " for that might be very material *. A great Deal might " be offered on this Subject, when it came to be fully de- " bated; but repeated it more than once, that, as this " Queſtion could not be judicially determined upon the " preſent Appeal, he was ſtill open to hear their Reaſonings

* A Right of Property in Authors by Common Law, is not mentioned by any Scotch Lawyer. Lord Bankton, who wrote his Inſtitute long after the Statute, ſpeaks a little on this Subject in Vol. II. p. 411. and ſeems to conſider the Inventors of new Manufactures, and Authors of Books, as upon the ſame footing; for he ſays, " Grants to the Inventors of new Manu- " factures, or Authors of Books, ſecuring " to them the ſole Benefit of the ſame, " are in Virtue of Statutes, and limited to " a certain Period of Years, after which " they determine." Then he gives the Subſtance of the Statute of Queen Anne; and, by miſtake, he lays it down as decid- ed in the Caſe of the Bookſellers, that thoſe who encroach on the Privelege, are not only liable in the Penalties, but in Damages, at leaſt to the Extent of the Profits made. In Proof of which Doctrine, he quotes the Interlocutor of the 14th of December, 1746; from which it is evident, his Lordſhip has not heard of the Alteration by the ſubſequent Interlocutors.

" upon

" upon this Subject, and would not be underſtood to give " an Opinion which might bind himſelf."

After hearing this Opinion, the London Bookſellers were adviſed, and were themſelves ſatisfied, that it was by no Means their Intereſt to puſh for a Deciſion, and accordingly, for ſeveral Years thereafter, many Editions of Books, to which they pretended a Right, were printed without Challenge, both in England and Scotland.

But in the Year 1758, a Plan was formed, of procuring a judgement, that might be quoted as a Precedent by a Colluſive or Mock-trial. With this View, a Suit was commenced by Mr. Tonſon, or ſome other of the London Bookſellers, againſt Mr. Collins, Printer and Bookſeller in Saliſbury, for vending Copies of the Spectator printed in Scotland. Mr. Collins, the Defendant, was by this time become deeply concerned in Copy-right, in Conjunction with the London-Bookſellers, ſo that it was very much his Intereſt to loſe the Cauſe, becauſe the Advantage, that would accrue to him from perpetuating the excluſive Right, would far overbalance any trifling Damages to which he could be ſubjected for ſelling the Scottiſh *Spectators*, ſuppoſing it had been underſtood or intended to make him pay them. Mr. Collins's Defence therefore, it will be readily believed, was not managed with the greateſt Accuracy, but the Court, upon hearing the Caſe, being ſenſible of its Importance, and perhaps ſuſpecting what was at Bottom, referred the Matter to the Twelve Judges of England, and it has lain over ever ſince.

The London-Bookſellers indeed, about the Year 1763, applied for ſeveral Injunctions againſt an Edinburgh Bookſeller, for reprinting certain Books, the Property of which, they alleged, belonged to them, but with no View to bring on a Deciſion; their ſole Purpoſe was to incommode and diſtreſs. This is evident with Regard to their Procedure upon an Edition of Pope's Homer. They brought on a Suit in Chancery for that Article, but, taking Advantage of the Death of one of the Plaintiffs, they have hitherto avoided bringing it to an Iſſue; and here, in paſſing, it may be worth while to obſerve, that, from the Contract between Mr. Pope and his Bookſeller, produced in Support of this

Suit, it appears, that Mr. Pope gave a Right to his Bookſeller, for the term of 14 Years, or as long as allowed by the Statute, 8*vo Annæ*, which ſhews his and his Bookſeller's ſenſe of the Matter.

It is not intended, in this Eſſay, to repeat Arguments invented and urged by others, or expatiate upon them. Therefore it ſhall only be obſerved,

With Regard to the Property claimed at Common Law, independent of the Statute, that the moſt plauſible Argument, offered on the Part of the London Bookſellers, is, that when an Author has beſtowed much Time and Labour in compoſing, and expended great Sums, perhaps his whole Stock, in printing and publiſhing an Edition of a Book, it is manifeſtly unfair and unjuſt, that another, the firſt Day that the Work is publiſhed, ſhould purchaſe a ſingle Copy, and forthwith ſet about a cheaper Edition, by which he not only intercepts the Profits the Author would have drawn, but brings upon him a certain and ruinous Loſs, by ſtopping the Sale of the Copies he had thrown off: That the Author has evidently a Right to prevent this; and wherever there is a Right, there muſt be a Remedy, and a Remedy in Courſe of Common Law or Equity *.

That the Author of a Book, or of a Machine or Art uſeful in Life †, has an equitable Title to inſiſt, that he ſhould

* This is the Argument uſed by Mr. Grant, Lord Advocate for Scotland, who was one of the Counſel for the London-Bookſellers before the Court of Seſſion.

† Some Pamphlets, lately publiſhed by the London-Bookſellers, though they admit, that the Inventor of a Machine has no Property in it, after he has made it public, yet they will not allow, that a Parallel holds between him and the Author of a Book; as they pretend there are Differences and Diſtinctions between them. See a Letter from an Author to a Member of Parliament, concerning Literary Property, publiſhed in 1747, and A Vindication of the Excluſive Right of Authors, written in 1762. The frivolous Exceptions, taken by theſe Authors, are very well obviated and expoſed by the Author of an Enquiry into the Nature and Origin of Literary Property, publiſhed alſo in 1762. He ſtates their Objections, and makes his Anſwers, in the following Manner.

"Object. In the Utenſil made, the "principal Expence is in the Materials "employed; which, whoſoever furniſhes "reaſonably, acquires a Property in the "Thing made, though by Imitation. On "the contrary, in a Book compoſed, the "principal Expence is in the Form given; "which, as the original Maker can only "ſupply, it is but reaſonable, how greatly "ſoever the Copies of this Work may be "multiplied, that they be multiplied to "his own excluſive Profit.

"Anſwer. The Expence of the Materials, with which that curious Piece of "Mechaniſm, the Microcoſm, is conſtructed, bears a greater Proportion to "the Coſt of the Labour, and Ingenuity "of the Inventor, than the Expence of "the Materials which compoſe the "ſcarceſt Book, bears to the Value of its "Compoſition. Hence it follows that, "in making a Chamber-utenſil, the principal Expence is in the Materials employed,

"employed,

ſhould have the excluſive Right of ſelling his Work for ſuch a Length of Time, as ought to reimburſe him of his Expence, and recompence him for his Trouble, is indiſputable; but it by no Means follows, that this Right ought to be inforced by the ordinary Courts of Juſtice. The poor have a moſt equitable Title to demand Maintenance from the rich, but it was never imagined that, independent of any Statute, they could have brought Actions before Courts of Law or Equity, for eſtabliſhing Rates upon the rich, ſufficient to ſubſiſt them. Courts of Juſtice can only interpoſe their Authority to make perfect Rights effectual, not imperfect ones, as all thoſe juſt now mentioned evidently are, as well as many others ariſing from the

" ployed; it is otherwiſe with Reſpect to " a valuable Machine. The Author ſays " that, in a Book, the principal Expence " is *in the Form given*, an unintelligible " Phraſe! If he means the Form of the " Compoſition, it is equally applicable to " a Machine.

" Object. He who makes an Utenſil, in " Imitation of another he ſees made, muſt " neceſſarily work with the ſame Ideas the " original Proprietor had, and ſo fully ac- " quires a Property in the Work of his " own Hands: but the moſt learned Book " in the World, may be copied by one, " who hath no Ideas at all: What Pre- " tence hath ſuch an one to Property, in " the Work of the Mind, who hath em- " ployed, in copying it, only the Work " of the Hand?"

" Anſw. The Author manifeſtly con- " tradicts himſelf. The firſt Difference, " laid down between a Book and a Ma- " chine, was, that the Letter was a mere " Work of the Hand. Now, it is con- " tended, that the Imitator works with " the ſame Ideas the original Proprietor " had. This Variance can never be re- " conciled, unleſs we ſuppoſe, that the " Proprietor had no Ideas at all. This is " nothing extraordinary; for we are told " in the next Paragraph, that a Man may " very well exiſt without them, and copy " learned Books too. The Author then " demands, whether ſuch a one would have " a Property in the Work of the Mind, " who hath employed only the Labour of " the Hand. To this I anſwer, that he " would not be entitled to Property, be- " cauſe the Subject-matter is not capable " of it: But the Claim of an ignorant I- " mitator of a Machine is equally good.

" Object. In an Utenſil made, the " framer of it hath plainly no regard to " any one's benefit, more than his own, " and he muſt finiſh it before it can be fit- " ted to his Uſe. His End being obtain- " ed in that individual Piece of Work, it " is but Reaſon, that his Profit ſhould " there terminate. In a mental Work, the " Thing turns another way, for the Con- " triver may himſelf enjoy all the fruits of " his Diſcoveries, without drawing them " out ſcholaſtically into Form.

" Anſw. I ſhould be glad to be inform- " ed, of what Uſe the Orrery was to the " Inventor; or whether he had not a clear " Conception of the Planetary Syſtem, be- " fore he ſo artificially repreſented it. If " the Author of this Objection would be " pleaſed to walk into the Shop of a Ma- " thematical Inſtrument-maker, he will " ſee many Inſtruments which are of no " benefit to the Conſtructor, beſides the " Profits accruing from their Sale: Where " is the Juſtice, that the Profit of the In- " ventor ſhould terminate in the individual " Machine, which poſſibly might coſt " him ſome Years in inventing, and might " be imitated by another in a few Days. " The End of the Inventor is not fuller " obtained in the firſt individual Machine, " than the End of the Author in the firſt " individual Book. If it be ſo then, it is " unreaſonable to grant him a Patent for " a longer time, which is contrary to the " Author's Poſition in another Place." Inquiry from p. 23. to p. 27.

The Doctrine which the Author of the Letter ſays is the true and particular Property in a Book, is juſt a Combination of Ideas; a Machine is ſo too: Why then ſhould not the Authors of both be equally intitled to make a Trade of communicating that Combination to the Public. It is either wrong to interfere with either, or it is lawful to interfere with both.

Obligations

Obligations of Friendſhip, Gratitude, and Benevolence. When a Man has diſcovered any uſeful Theory in Mathematics, or any other Science, it is ungenteel and ungenerous in any other to aſſume the Honour of the Invention to himſelf, or falſely aſcribe it to any but the true Author; yet it ſurely cannot from that be inferred, that the true Author could bring an *Actio Injuriarum*, or of Scandal and Defamation, againſt any Perſon, who ſhould falſely aſſert that it was either his own or another's. In the ſame way, it may perhaps be ungenteel and ungenerous to interfere with an Author, in the Trade of printing and ſelling his Book; but it is not therefore a Conſequence, that the Author will have a Right to bring either a civil Proceſs for Damages, or a criminal one for Robbery or Theft. The Circumſtance of his having been at much Pains in compoſing, and at great Expence in printing his Book, may give him an equitable Claim for having a temporary excluſive Right conferred upon him, but never can *ipſo facto* eſtabliſh a perpetual Property in him. The proper Remedy therefore, is an Application to the ſupreme Magiſtrate, or Legiſlature of the Country, for a Privilege; and accordingly that was the Method conſtantly followed before the Statute paſſed, and is the only one yet purſued in foreign Countries, whoſe Lawyers have no Notion of an excluſive Right in Authors at common Law.

With Regard to the Act of Queen Anne, it was evidently intended to be a general ſtanding Patent, as Lord Hardwicke called it, to Authors and Bookſellers, and ſave them the Trouble and Expence (from 80 to 100 l.) of applying to the King for a Privilege every Time they printed a new Book: at which Time it is often uncertain, whether the Profits would pay that Expence.

The Writers for the London-Bookſellers are pleaſed to argue, that it appears the Legiſlature underſtood, that Authors, and thoſe who purchaſed from them, had a Property antecedent to the Statute, becauſe the Preamble of that Law ſets forth, that a Liberty had been taken of printing, reprinting, and publiſhing Books and other Writings, without the Conſent of the *Authors or Proprietors*; which, it is ſaid, ought not to be reckoned a mere Inaccuracy of Expreſſion, becauſe " the Sentiment neceſſarily ſuppoſes,

" that

" that they uſed the word *Proprietors* in it's ſtrict and ex-
" act Signification, it being a Repreſentation of the bad
" Effects from the Liberty taken of printing and reprinting
" Books, without the Conſent of their Authors, or their
" Aſſigns *."

The Expreſſion here founded upon, is palpably an Inaccuracy, owing to the inaccurate Expreſſion in the Petition from the Bookſellers and others, above inſerted, which procured the Act, and is partly tranſcribed into its Preamble. The bad Effects, mentioned in the Act, are the Diſcouragement of learned Men, and Loſs they had ſuſtained. Theſe might afford a good Reaſon for veſting the Property in them, but not for holding, that they had *ab ante* a Property.

But the Senſe of the Legiſlature upon this Point is not to be gathered from an Expreſſion in the Preamble; and that it lay quite the other way, is apparent from the Amendment made upon the Title of the Act. From the Hiſtory of the Procedure in Parliament, it is plain, that the Act was obtained by the Bookſellers: The Bill, no doubt, would be drawn by Gentlemen in their Intereſt; accordingly the Title firſt given to the Bill, as has been already obſerved, ſuppoſed and implied, that Authors and Purchaſers from them had *ab ante* a Property in their Books; but this Title was amended and altered, before it was engroſſed, in ſuch a Manner as to ſuppoſe and imply the direct contrary. It was then entitled, " An Act for the Encouragement of Learning, by veſting," &c. This Alteration ſufficiently indicates the Senſe of the Legiſlature, and cannot be oppoſed by an Expreſſion in the Preamble, which was not corrected, either becauſe it was not adverted to, or becauſe it was not thought capable of the conſtruction the Bookſellers of London now endeavour to put upon it.

The Writers for the London-Bookſellers lay hold likewiſe of a Proviſo in the Concluſion, " That nothing in this
" Act contained, ſhall extend, or be conſtrued to extend,
" either to prejudiſe or confirm any Right that the ſaid
" Univerſities, or any of them, or any Perſon or Perſons,
" have, or claim to have, to the printing or reprinting any

* See the Letter to a Member of P[illegible]

" Book

" Book or Copy already printed, or hereafter to be print-
" ed." They admit, that one Purpoſe of this Proviſo was, to leave undecided all Claims, or Pretences of Claims to excluſive Printing, from Patents, Licences, &c. But they contended, that " the large Wording of it appears to " have a particular Aim at obviating ſuch Miſconſtruction " of the Statute, as if the additional temporal Security, " thereby given, either implied, that there was no Right " of Property before, or elſe abrogated what it found *."

But with Submiſſion, it is obvious, that if the Words of this Proviſo are interpreted to mean any more than a *Salvo* upon all Patents, Licences, &c. (ſuch as Law-Printers, King's Printers, &c.) they muſt operate a Repeal of all the preceding Clauſes; for the London-Bookſellers ſurely will not deny, that this Law was paſſed, in order to confirm, by penal Sanctions, the Rights of Authors and Bookſellers.

But what renders the Queſtion entirely inſignificant, whether the Legiſlature underſtood Authors and Bookſellers to have *ab ante* a Right of Property, as alſo the Argument for the Bookſellers of London, that " the Act eſta-
" bliſheth no Right, but takes up a Right already eſta-
" bliſhed, which it guards by additional Penalties †," is not only the Title of the Act, which in ſo many Words eſtabliſhes and veſts a Right, but the enacting Clauſe, which ordains, that Authors of Books, or Purchaſers from them, ſhall, in one Caſe, " have the ſole Right and Liberty of " printing ſuch Book and Books, for the Term of one and " twenty Years, to commence from the ſaid 10th Day of " April, *and no longer*." — In another Caſe, that they " ſhall have the ſole Liberty of printing and reprinting " ſuch Book and Books, for the Term of 14 Years, to " commence from the Day of the firſt publiſhing the ſame, " *and no longer*:" And, " That, after the Expiration of " the ſaid Term of 14 Years, the ſole Right of printing or " diſpoſing the Copies, *ſhall return* to the Authors thereof, " if they are *then living*, *for another* Term of 14 Years."

Suppoſing Authors to have had a Right of Property antecedent to the Act, yet it cannot be diſputed, that the Legiſlature could annihilate it altogether, or new-model

* See the Letter to a Member of Parliament.

† See the Vindication of the Excluſive Right of Authors.

and

and abridge it at Pleaſure. The Legiſlature has, in the moſt explicit Terms, declared that Authors, and Purchaſers from them, ſhall have the ſole Right of printing their Books for a certain Term of Years, and *no longer*; which is the ſame Thing with expreſsly declaring, that, after that Period of Years, other Perſons ſhould have the Right and Liberty of printing Books as well as they, though it does not exclude them to print in common with others. Though Authors, and thoſe in their Right, had a perpetual Right of Property in their Books, yet was there no Iniquity in rendering it temporary by this Act, becauſe of the ſevere Forfeitures and Penalties, by which their Right is protected for a long Tract of Time, during which, if their Books are good for any thing, they will draw much more than ſuffices to reimburſe and recompence them; and it ought not to eſcape obſervation, that Authors have never ſhown any Diſſatisfaction with the Regulations of this Statute, only a Junto of Bookſellers have complained of it.

It remains only further to be ſuggeſted, that every Conſideration of public Utility ſtrongly oppoſes the Perpetuity claimed by the Bookſellers of London; which, ſuppoſing the Queſtion to be embaraſſed with any Doubt or Difficulty, ſhould turn the Scale againſt them.

The moſt curſory Reflection muſt ſatisfy every Perſon;

1*ſt*, That the perpetuating a Monopoly of Books, tho' it will tend to enrich and aggrandize about half a Dozen Bookſellers in London, will, at the ſame time, depreſs and diſcourage all the other Bookſellers and Printers in the Kingdom *.

2*dly*,

* Here the Opinion of the great Colbert, prime Miniſter to Lewis XIV. upon a ſimilar Caſe, will ſurely have its Weight: "The Stationers Trade in the Country, "ſtands in Need eſpecially of your Ma- "jeſty to appoint it ſome other Laws, be- "cauſe it is ſubject to the Inquiſition "of the Stationers of Paris, who, by "Means of the Privileges which they ob- "tain out of the Chancery, hold all the "others of the Kingdom in ſuch a Depen- "dence, that they muſt either ſtarve, or "run the Hazard of undoing themſelves. "If your Majeſty pleaſes to take Compaſ- "ſion of them, you muſt reſtrain thoſe "Privileges to the ſole City of Paris, and "that it may be allowed to the others to "follow their Methods. Paris, of itſelf "alone, is worth more than the reſt of the "Kingdom; and it is not juſt, that above "2000 families ſhould periſh for a ſmall "Number of the Stationers there.

"The Council is full of Inſtances, "which are formed on the like Caſe, and "your Kingdom hath an intereſt in it, "that your Majeſty pronounces in Favour "of the oppreſſed: for the Books, which "one hath from Paris, are ſo dear, that "the poor cannot come up to them; and "yet a Perſon, who hath a hundred "Crowns

2*dly*, That it will occaſion Slovenlineſs, Inelegance, and Incorrectneſs in Printing *.

3*dly*, The Limiting the Monopoly of Books, and opening a larger Field for the Art of Printing, would greatly increaſe the Revenue ariſing from the Conſumption of Paper †.

Laſtly, The perpetuating the Monopoly of Books, muſt inevitably enhance their Prices beyond all Bounds, the infallible Conſequence of which is to retard, and indeed ſtop altogether the Progreſs of Learning. This has been complained of as the Conſequence of Patents and Privileges, from their firſt Introduction; and that there is as much Reaſon, if not more, for exclaiming againſt that Abuſe at preſent, than formerly, muſt be felt by every Man, who is deſirous of having a tolerable Library of Books, and is not poſſeſſed of a moſt opulent Fortune.

" Crowns Revenue, hath the Neceſſity of " Inſtruction, as well as he who hath 2000. " One muſt therefore furniſh him with " the Means to do his Duty, which he " cannot attain to, ſo long as one holds " his Neck under Foot." Bernard's Tranſlation of Colbert's Political Teſtament, printed at London, 1695, page 355.

* The Scottiſh Bookſellers, in their Memorial and Condeſcendence before the Court of Seſſion, allege, without Contradiction, the groſſeſt Incorrectneſs in the Editions publiſhed by the London-Bookſellers: " Among many Inſtances," ſay they, " that might be given, " let any Body look into the late Edition " of Cudworth. Let thoſe, who underſtand the Hebrew and Greek languages, " look at the Quotations, and they will " find all the Blunders of the ignorant " Workman: The Memorialiſts defy them " to ſhow three Lines of Greek together " without an Errour."

† The Scottiſh Bookſellers, in their Memorial juſt now quoted, ſay, " One might " ſhow, if it were allowed to reprint every " new Book that was thought proper, the " additional Revenue that would accrue to " his Majeſty on the greater Conſumption of Paper, would amount to more " than all the Bookſellers give, or the " Learned make of their Works."

FINIS.

A

LETTER

TO

ROBERT TAYLOR,

BOOKSELLER, in BERWICK.

BY the Law of God, whether written, or engraven on the Heart only, every good Man finds himſelf under a moſt ſacred and immutable Obligation to do all the Good in his Power, independent of Reward, and to abſtain from all Evil, independent of the Fear of Puniſhment. Nevertheleſs, ſuch is the imperfect State of Mankind, that it has been found neceſſary, for the Good of Society, to enact written Laws, to reſtrain Injuſtice, and to encourage public Services. Theſe Laws are not commonly altogether perfect, but it is eſteemed a great Matter when they are relatively perfect, that is, when they admit the greateſt Good, and exclude the greateſt Evil; upon the whole, taking Human Affairs as they neceſſarily are. Thus, to enjoy the Happineſs ariſing from regular Government, it was neceſſary that

Men ſhould give up a Part of their natural Liberty; that each might enjoy the Advantages ariſing from aſcertained Property, it was neceſſary that each Member ſhould ſubmit to written Laws, that gave Extent and Limits to the Property of each Individual, bounded by the general good, becauſe no Individual can have a Right contrary to the general Good and Proſperity of the Society of which he is a Member. There are many Things, which, viewed in a particular Light, appear juſt and good, which are really found, when viewed in all their Conſequences, to be attended with great Evils upon the whole. Of this Nature is the Property claimed by ſome very reſpectable and rich Bookſellers in London: They ſeem to fancy, that it would be a real Encouragement to Learning, to give Authors, and, in Conſequence of their Aſſignment, to give Bookſellers a perpetual Property in their Works: But this, ſo far from being a real Encouragement to Learning, would tend very much to diſcourage and enſlave it; becauſe no Bookſeller can afford to buy an Author's Works without a near Proſpect of Indemnification. Mr. Pope, who knew Matters of this kind better than moſt Authors, uſed to ſay, That no Bookſeller would give more for the Property of a Work, than he would give for a large Impreſſion, with Security not to be reprinted upon till it was ſold off. It is upon this moſt certain Truth, that we cannot ſufficiently praiſe the Wiſdom of the Statute concerning this Matter, that treats Authors as Minors, and reſtrains them from ſelling their own Works for above the Space of fourteen Years; after that Period they return to their Author, like the Iſraelites Alienations at the Jubilee. If the Work proves of a ſtandard Kind, the ſecond Sale will be at a better Price than the firſt: for as Learning and Taſte are not generally the Lot of Bookſellers, unknown Authors, whatever their Merit may be, get generally

ſittle for their Works. The Law, in reſtraining the Property of Books to twenty-eight Years, has done what is very prudent upon the whole. Many Authors do not ſurvive the firſt fourteen, and few ſurvive twenty-eight. Beſides, an Author has it always in his Power to intimidate and puniſh any Bookſeller, that ſhall take upon him to print his Works without his Conſent, by diſcrediting the Edition, and adding Corrections and Enlargements to an Edition of his own.

When Property of Books is not perpetual, it leaves it always in the Power of the Poſterity of a famous Author, to do honour to his Memory by a ſplendid and ornamented Edition of his Works.

The Inconvenience that a few Authors may be put to by ſurviving the legal Property of their Works, is richly recompenſed by the Good proceeding from this Reſtriction, becauſe it lays open all the Works of the learned and ingenious to their Lucubrations, to republiſh with what Advantages they can confer upon them: And if they will undergo the Expence and Risk, they may enjoy the full Profits; and often with leſs Risk and greater Plenty than they can do from their own Works alone. It was not by an original Work, but by an excellent Tranſlation of the oldeſt Greek Poet, that Mr. Pope laid the Foundation of his Fortune; it was by condeſcending to do the Drudgery of an Editor to Shakeſpear, that he made the next capital Sum. Had Shakeſpear been fettered by perpetual Property, Sir Thomas Hanmer might have conferred upon the Univerſity of Oxford his engraven Plates, but they durſt not have reprinted the Author.

It is needleſs to mention Mr. Theobald, Dr. Warburton, Mr. Johnſon, and other learned Gentlemen, who continue ſtill to engage the World by their new Editions of the ſame Author. Commenting upon an Author ap-

peared ſo great a Merit to Mr. Pope, that he left the Property of all his unalienated Works to Dr. Warburton, on condition, that he ſhould write Notes on them. The Wit of many modern Authors will perhaps in the next Age ſtand as much in need of a Commentator, as a Rabelais or a Hudibras. Why then will we enſlave them by perpetual Property to a Set of Men, who may diſfigure them, by heaping Errors of the Preſs upon Errors, but cannot hand down their Wit to Poſteirty by Illuſtrations.

The ancient Greeks and Romans have not the leaſt Trace in their Laws or Hiſtory of any Author claiming a Property in his Works after Publication, tho' Bookſelling was then a Trade, and thouſands lived by tranſcribing and ſinging Homer's Verſes.

It is in the City of London alone, where Bookſellers claim a Property independent of the Legiſlature. In all other Cities of the World, what has no written Privileges conferred by the Government, is free to all the World. It is the ſame in Great Britain with regard to all other Inventions, where a Patent for a Monopoly has not been applied for and granted. Mr. Buckley, the Editor of Thuanus, knew that no Patent could be of any Service to him in ſecuring the Property to him of that expenſive Work, and therefore applied for an Act of Parliament, and obtained it.

The firſt Printers had no Privileges, when they began, it was always for a limited Time. Froben had printed many of his moſt expenſive Editions before he had any Privilege: His firſt Application was by Eraſmus, in the Year 1522. after having printed near thirty Years with great Reputation; and this Privilege is applied for not as a Right, but as a Favour to extraordinary Merit, and not for perpetual Property, but for the Space of two Years for leſſer Works, and for the largeſt, five. Whoever reads Palma's, or any other good Hiſtory of Print-

ing, will find, that real Practice is every where againſt the Purſuers.

Every Society or Corporation of Tradeſmen endeavour to monopolize to the utmoſt of their Power, and enact By-laws among themſelves for that purpoſe; but as their little Fraternities are all Mankind with them, it is the Buſineſs of Juſtice and Law to correct the Abuſes of ſuch Fraternities, not to encourage and fortify their engroſſing and ſevere Tyranny and Oppreſſion over their younger and poorer Brethren.

It is only a few in the City of London that have an Intereſt in this perpetual Property: The Majority of Dealers in London itſelf have an Intereſt in reſtraining Property to what is conferred by Statute only. In order to give a popular turn to the Cauſe of the Plaintiffs, your Cauſe has been repreſented as the Cauſe of Scotland; but you ſtand on your own Bottom: Your Induſtry interferes equally with the Scots, as with the Engliſh, and your Cauſe is more immediately the Cauſe of the Bookſelling and Printing of England. The Scots are unacquainted with any Property but what is conferred by Law: But a perpetual Property once eſtabliſhed, it is to be feared, that the Scots will buy the Property of all our capital Authors, and we ſhall henceforth have only Scots Editions. Tillotſon and Barrow, Shakeſpear and Milton, Locke and Newton, will no longer employ the Engliſh Printers of this extenſive Capital. The London Bookſellers will be only Retailers for the Scots; and thus, by exalting the Power of a few Men, who have engroſſed the Property of all the Literature of England, we ſhall ceaſe to have a Right to reprint our own Authors. Carry the Right but a little further, and they will ſell the Right of printing Engliſh Authors to the Dutch, to the French, or to any rival Nation.

The celebrated Tonſons were Proprietors of the

Works of the greateſt Wits in England. Upon the late Sale of the remaining Stock, the Property of all theſe Writings went along with the Books themſelves. Let any Man compare the Sums of Money paid for each Parcel of a Book, with the ordinary ſelling Price, and he will find, that the Property was only an Inducement to buy, and that Value was found in the Books themſelves, independent of the Property annexed. It is therefore the Intereſt of the Public to take off all Reſtraints that Statute has not laid on, that a more free and generous Emulation may be ſpread over the Nation; that Knowledge and Virtue may be more univerſally diffuſed, and Engliſh Authors, by an Export-trade, ſpread over the World.

FINIS.